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2717

MEMORANDUM FOR: Deputy Director of Central Intelligence

VIA: Deputy Director for Administration

FROM: James H. McDonald
Director of Logistics

SUBJECT: Contracting Officer Positions in the
Central Intelligence Agency

1. Action Requested: This memorandum contains a recommendation for your approval.

2. Background:

a. The advent of the Senior Intelligence Service (SIS) and the possible implementation of the merit-pay system dictate that we take another look at the role of contracting officers in the acquisition process within the Central Intelligence Agency (CIA). Concern has been expressed in several key forums over the independent role of the contracting officer in the acquisition process. In U.S. Comptroller General Report B-164682 entitled 'Action Required to Improve Department of Defense Career Program for Procurement Personnel,' dated August 1970, the Comptroller General stated, 'There is a need to develop a competent procurement work force with the capacity for exercising more initiative and judgment in making procurement decisions.' The Report of the Commission on Government Procurement, dated December 1972 (this report is the culmination of the most exhaustive study of Federal procurement ever undertaken), also emphasized the need for making clear the role of the contracting officer as the focal point for making or obtaining a final decision on a procurement. The Office of the Inspector General (OIG) has in numerous reports expressed concern over the role of the contracting officer in the CIA. For example, in the OIG audit report dated November 1976 and entitled 'Agency Relations With the U.S. Business Community,' it was stated, 'He (the contracting officer) is an important check and balance point, yet he is a key member of a team where production is paramount. Insofar as he may want to march to a different drummer than S&T, he is in a disadvantageous situation.' In the draft of the latest OIG report involving procurement (the draft is dated August 1979 and is entitled 'Industrial Contracting and Security'), the following comment was made:

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"In our judgment, neither set of contracting officers (referring to contracting officers supporting National Programs contracts and Agency-funded contracts) has the predominant role envisioned in law and regulations. The Agency contracting officer, because of the nature of his work and the structured organization to which he belongs, perhaps has somewhat more real authority than that held by his National Programs counterpart. But the point to be made is that the contracting officer on either side does not, for whatever reason, occupy the exalted position to which he is entitled, and, in fact, mandated."

STAT

[redacted] a representative of our own CIA Office of General Counsel, has reviewed the facts included in this paper and concurs with recommendations therein. He has written a comprehensive separate memorandum which summarizes the legal role of the contracting officer, including his authority to act and his duty to act independently. His paper can be made available if further documentary support is required.

b. The acquisition process, because of the complexities of Agency procurement, requires a broad engineering and technical support base. Specialists in the fields of engineering, the physical sciences, auditing, and law necessarily participate in the acquisition process and may dominate specific phases of a given procurement action. The role of the contracting officer is not to preempt these specialists; rather, it is one of resolving within the Agency the various procurement considerations, gaining agreement with the contractor, and operating as the business manager of the Government's interest. Inherent in this "business manager" role and under Public Law, the contracting officer is charged with the responsibility for performing or having performed all administrative actions necessary for effective contracting.

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c. In 1977, the Industrial Contracting and Industrial Security (ICIS) Task Force did an in-depth review of the role of the contracting officer in the CIA. The task force recognized that the Agency's organizational structure for procurement could create an environment which would inhibit the contracting officer from exercising the necessary independence of judgment to operate effectively. At the time the task force was conducting its study, the fitness reports for contracting officers on the decentralized teams were written and reviewed by line officials within the BDS&T and NFAC. While there were differences of opinion as to how serious this problem was, two recommendations evolved to provide a means whereby the annual fitness reports for the contracting officers would include comments by procurement as well as line officials. These recommendations were approved by the Executive Advisory Group as follows:

ICIS Recommendation No. 24: That the Director of Logistics (for contracting officers) and the Director of Finance (for auditors) participate jointly with Agency procurement components in preparing Letters of Instruction. The Director of Logistics and the Director of Finance shall also prepare written evaluations of their personnel assigned to industrial contracting teams to ensure assessment of their technical performance. These evaluations shall be shown to the individuals concerned, attached to their fitness reports, and included in their official personnel files.

SAG Recommendation of 23 May 1978: The BDS&T shall provide that the Director of Logistics, or his designee, the Chief, Procurement Management Staff, OL, is the reviewing official on fitness reports for the Chief, Procurement Management Staff, BDS&T, and for the Chief, Contracts Staff, Office of Development and Engineering, BDS&T.

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d. Our immediate concern is the impact of the new SIS on the positions mentioned in the IAG recommendation. The Chief, Procurement Management Staff, ODS&T, and Chief, Contracts Staff, Office of Development and Engineering, ODS&T, occupy positions which have been identified as within the SIS. While it was recognized by the task force and the Executive Advisory Group that the independent role of the contracting officer as envisaged by statute can and will be at times in variance with his supervisor/subordinate role in relationship to operational line management, it was felt that the review by the Director of Logistics or his designee of the fitness report for the incumbents of these two positions would provide effective relief for what might be construed by some as an unworkable situation. The EAG recommendation was approved by the DCI and has been implemented. However, it is our belief that the relief provided by implementation of the EAG recommendation is not sufficient in light of the performance award procedures of the SIS.

e. We are also concerned over the impact of the adoption of a merit pay system on the contracting officers for the decentralized procurement teams in the ODS&T and AFAC. The same kind of undue pressure to adhere to line management decisions by the requirements managers would be generated by the merit pay system as those generated by the bonus pay procedures of the SIS.

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3. Recommendation: In order to provide the necessary work environment for contracting officers to exercise the independent judgment necessary under Public Law and good business practice, it is recommended: (a) that the two procurement officer SIS positions in the DDS&T be exempt from SIS procedures which provide that the directorate of assignment has responsibility for recommending and processing performance awards for SIS officers. In lieu thereof such recommendation and processing for awards would be the responsibility of the Director of Logistics, as senior contracting officer for CIA, and the DDA Senior Resources Board along with all other SIS procurement positions; (b) upon adoption of the merit pay system, the contracting officer positions within the DDS&T and NFAC be similarly exempted. These two recommendations do not affect the basic "team concept" we now follow in the procurement process.

/s/ Jc

James H. McDonald

CONCUR:

Deputy Director for Administration

(date)

APPROVED:

Deputy Director of Central Intelligence

(date)

See attached covering routing sheet from O/Pers. + DDA.

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Intelligence Agency

Distribution:

Orig - Return to OL/PMS (*official*)

- 1 - DDCI
- 1 - DCI
- 1 - ER
- 2 - DDA
- 1 - DDS&T
- 1 - D/Pers

Distribution Withheld:

- ~~1~~ - OL Files
- 1 - D/L Chrono
- 1 - OL/PMS Chrono

STAT

OL/PMS:

31 Oct 79

ROUTING AND RECORD SHEET

OL Files

SUBJECT: (Optional)

Contracting Officer Positions in the
Central Intelligence Agency

OL 9 4564
PERS 79-6784
DDA 79-3794

FROM: Harry E. Fitzwater
Director of Personnel

EXTENSION

NO.

DATE

11 December 1979

STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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ADDA

STAT

12/13

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DDA

12/28

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D/Pers

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McDonald

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Deputy Director

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1. We have discussed this with Jim McDonald, along with [redacted] of OGC. While most sympathetic with the very real problem of a contracting officer trying to please his DDS&T boss, perhaps at the expense of his objectivity, we made the following observations:

a. Although this may be the best (or worst) example, there are many other similar situations of DDA careerists serving in other directorates, e.g., certifying officers, admin and personnel officers, and regional medical and security officers.

b. This general problem was discussed at length by the Executive Committee, which decided (over DDA and D/Pers objection) to make the directorate of assignment responsible for performance appraisal and award recommendation.

c. If an exception were to be granted, it should include having the D/LOG prepare the AWP and the PAR as well, as these are vital to the award process.

Based on the above, Jim decided not to press for a DDCI exception on this at this time. He did however want it brought to your attention.

Harry E. Fitzwater